

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

TIMOTHY A. ANDERSON,)	
)	
Plaintiff,)	
)	
-vs-)	Case No. CIV-06-358-F
)	
)	
)	
LT. MARK BRUNING, et al.,)	
)	
Defendants.)	

ORDER

On October 25, 2006, United States Magistrate Judge Gary M. Purcell issued a Supplemental Report and Recommendation (doc. no. 28), wherein he recommended that plaintiff's cause of action under 42 U.S.C. § 1983 against defendants Lt. Mark Bruning and unidentified "police officers" be dismissed without prejudice for failure to effect timely service of process under Fed. R. Civ. P. 4(m).

On November 15, 2006, the court entered an order deferring a ruling on the Supplemental Report and Recommendation issued by Magistrate Judge Purcell. Upon review of plaintiff's objection to the Supplemental Report and Recommendation, the court granted plaintiff an additional 60 days to effect service of process on defendants Lt. Mark Bruning and unidentified police officers. The court advised plaintiff that if service of process was not effected within the 60 days, the court shall accept, adopt, and affirm the Supplemental Report and Recommendation.

The record reflects that plaintiff has not effected service of process upon the unidentified police officers within the required 60 days. As a result, the court,

pursuant to its November 15, 2006 order, shall accept, adopt and affirm the Supplemental Report and Recommendation to the extent it recommends dismissal of the unidentified police officers without prejudice for failure to effect timely service of process under Fed. R. Civ. P. 4(m).

As to defendant, Lt. Mark Bruning, the record is somewhat ambiguous as to whether service of process was effected upon defendant. However, on February 28, 2007, defendant, with leave of court, filed an answer to plaintiff's amended complaint. With the filing of the answer, the court declines to accept, adopt and affirm the Supplemental Report and Recommendation to the extent it recommends dismissal of defendant, Lt. Mark Bruning, without prejudice for failure to effect timely service of process under Fed. R. Civ. P. 4(m).

As a housekeeping measure, the court notes that prior to the entry of the Supplemental Report and Recommendation, plaintiff filed a Motion for an Extension of Time (doc. no. 27), seeking additional time to show cause for his failure to serve defendants. The Supplemental Report and Recommendation acknowledged the motion but did not specifically rule on the motion. In light of the court's November 15, 2006 order granting plaintiff additional time to effect service of process, the court finds that plaintiff's motion should be denied as moot.

IT IS THEREFORE ORDERED that plaintiff's Motion for an Extension of Time, filed October 18, 2006 (doc. no. 27) is **DENIED** as **MOOT**.

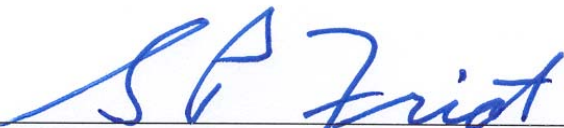
IT IS ALSO ORDERED that the Supplemental Report and Recommendation issued by United States Magistrate Judge Gary M. Purcell on October 25, 2006 (doc. no. 28) is **ACCEPTED, ADOPTED** and **AFFIRMED** to the extent it recommends dismissal of the unidentified police officers without prejudice for failure to effect timely service of process under Fed. R. Civ. P. 4(m).

IT IS ALSO ORDERED that plaintiff's 42 U.S.C. § 1983 action against the unidentified police officers is **DISMISSED WITHOUT PREJUDICE** pursuant to Fed. R. Civ. P. 4(m).

IT IS ADDITIONALLY ORDERED that the Supplemental Report and Recommendation issued by United States Magistrate Judge Gary M. Purcell on October 25, 2006 (doc. no. 28) is **DECLINED** to the extent it recommends dismissal of defendant, Lt. Mark Bruning, without prejudice for failure to effect timely service of process under Fed. R. Civ. P. 4(m).

IT IS FURTHER ORDERED that this matter is re-referred to United States Magistrate Judge Gary M. Purcell in accordance with the court's prior order of referral dated April 5, 2006 (doc. no. 4).

DATED March 1, 2007.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE